

FUTURE OF EXTERNAL ACTION OF THE EUROPEAN UNION AND POSITIONS OF THE CZECH REPUBLIC

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1. Introduction

The quest for a common or at least highly co-ordinated foreign policy has been becoming increasingly discussed topic within the European Union despite the fact that its political declarations go far beyond the achievements in practice. Interestingly, a large majority of the European public opinion, often very critical to the political decisions made by both – national and “common European” representatives, has identified with the idea of Europe as a global player on the international scene. Undoubtedly, much has been achieved especially in the area of Common Foreign and Security Policy (CFSP) since 1999 when the Treaty of Amsterdam establishing the post of the High Representative (HR) came into force. Yet, there exist certain discrepancies in the European external relations resulting from handling a wide range of issues using different instruments and procedures¹ that need to be sorted out.

Two Working Groups have been set up in the Convention about the future of the European Union to tackle its foreign policy issues – the Working Group (WG) VII on the External Action and Working Group VIII on Defence. The division can seem rather discontinuous at first sight but setting-up a group concentrating solely on security and defence issues the Union has been facing was meant as an evidence of the increasing commitment of the Union and its Member States to act actively in this area. In addition, pooling the economical and political external relations has enabled the WG VII to cover the issue in its entirety and address “the four inter-related challenges (...) – to make decision-making more effective, ensure greater coherence across the whole range of EU

¹ The problem of coherency of Union's external action lies in its duality. While handling the economical external relations fall under competence of the Commission on the Community level, the political aspects of external relations (CFSP) are dealt on the inter-governmental level in Council. Apart from that, the evolution of the European Security and Defence Policy (ESDP) within the CFSP pillar has further complicated the situation as launching any EU operation with military implication will depend upon the willingness and voluntary participation of individual Member States (forming ad-hoc „coalitions of willing“)

external relations, show more courage in promoting EU values, and learn to set clear priorities”².

2. Working Group VII on External Action

The Working Group on External Action is one of the eleven groupings set up within the Convention on the future of the European Union. At the entire beginning of the debate on the future form of the Union’s external action was a discussion paper drafted by the Praesidium (CONV 161/02). It was presented to the Convention delegates as a basis for the debate in the plenary session. The paper identified main areas of external action of the European Union (external trade policy, development co-operation, the Common Foreign and Security Policy (CFSP), the European Security and Defence Policy (ESDP), the European Union in International Organisations) and their current state of development. In addition, the Praesidium’s paper defined areas whose improvement would maximise the impact of the Union’s external action. Lastly, it presented questions to be addressed by the Convention in order to fulfil the increasing aspirations of the EU to act as a global player on the international stage.

The next step in the debate on future of the external action of the Union was the plenary session (11th and 12th July 2002). The conclusions of the session provided basis for the mandate of the Working Group (CONV 252/02, 10th September 2002), confirming that “the EU has much to gain from acting collectively on the international scene”³ and recognising that “the challenges of globalisation require the Union to fulfil its international role by using coherently and effectively all the resources at its disposal”⁴.

The working programme of the WG VII, chaired by the former Belgian Prime Minister and current Vice-President of the Convention Jean-Luc Dehaene started at the end of September (24th and 25th September 2002) and was accomplished in mid-December by completing the final version of the report.

The Group held 8 meetings, one of them jointly with the WG VIII on Defence (14th November 2002) on the issue of civil crisis management. The working effort of the group was complemented by evidence given by Chris Patten (External Relations Commissioner – RELEX), Javier Solana (High Representative for CFSP – HR), Pascal Lamy (commissioner responsible for commercial policy), Poul Nielson (Commissioner for Development Co-operation and Humanitarian Aid) and Pierre de Boissieu (deputy Secretary-General of the Council) whose contributions provided the Group with the most relevant information and ideas based on personal and professional experience. Apart from that, the members of the Group themselves submitted a substantial number of working documents on the discussed issues and were seconded by the Secretariat of the Convention preparing the background documents (the complete list of all working documents of the Group has been attached to the Final Report).

² Everts, Steven: EU Foreign Policy: From Bystander to Actor. Policy Brief. CER, May 2002.

³ Mandate of Working Group VII on External Action (CONV 252/02), p. 2.

⁴ Ibid

Subsequently, the Final Report of the WG VII on External Action was presented to the plenary session by the Chair Mr. Dehaene and was broadly discussed (CONV 473/02, 20th December 2002) by the delegates. Both, the output of the debate in the plenary and the Report will serve as the main guidelines for Praesidium's considerations and should be reflected in the final draft of Constitutional Treaty that is to be finalised by summer 2003.

3. The Final Report of WG VII

The Report on "External Action" (CONV 459/02, 16th December 2002) has been the final output activities of the respective Working Group of the Convention with basis on the two working documents discussed in the Group meetings – the Preliminary draft final report from 8th November 2002 (WG VII – WD 21) and the three updated versions of the Revised draft report from 22nd November/29th November/9th December (WG VII – WD 21 Rev 1/2/3).

The Report is divided into two main chapters annexed by the list of all working documents of the Group (CONV 459/02). Atypically, but with a degree of sense, the Part A of the Report puts forward recommendations, ranging from those gaining the unanimous support of the Group to those whose scale of support among the Group members was rather modest. The Part B, following the recommendations, provides an in-depth analysis of the Group's discussions and a detailed in-sight into the complexity of the whole issue and the interconnection among the broad variety of Union's tools and provisions used for its external action. The Group identified five major categories, each of which containing a large number of issues to be discussed⁵.

- I. Common interests, principles and objectives
- II. Competences
- III. Coherence and efficiency of action
 - Instruments for EU's external action
 - Structures within and between institutions
 - i. Option to keep the functions separate and practical measures to enhance synergy
 - ii. Option to full merger of the HR with the RELEX Commissioner to ensure the highest possible level of coherence
 - iii. Option of double-hatting – the European External Representative (EER) exercising offices of both – HR and RELEX Commissioner
 - iv. Option of creating post of the European Minister of Foreign Affairs under direct authority of a permanent President of the EU combining functions of HR and RELEX Commissioner, chairing the ERC
 - Instruments and decision-making
 - Financing CFSP
 - Role of the European Parliament
- IV. International Agreements
- V. External services and Representation

⁵ Report of WG VII on "External Action", Part B – Detailed report of discussions, p. 11)

4. Recommendations to the Convention

A. *Grouping of External Action Articles in the Treaty*

- All aspects of the EU external policy incorporated into relevant articles should be grouped in a section of the new Treaty, keeping different arrangements for different policy issues.

B. *Principles and Objectives*

- The action of the European Union should be guided by following values: “democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, the principles of human dignity, equality and solidarity, and respect for international law in accordance with the principles of the Charter of the United Nations”(p.2).
- The main objectives of the EU external policy are as follows:
 - a. To safeguard and consolidate the common values
 - b. To preserve peace, prevent conflicts and strengthen international security
 - c. To foster the durable economic and social development of the developing countries
 - d. To encourage the integration of all countries into the world economy
 - e. To ensure sustainable development and preserve the global natural resources
 - f. To confront both man-made and natural disasters
 - g. To promote deepening of the international co-operation and global governance

C. *Strategic objectives and interests*

- Based on the objectives and principles, the European Council should define strategies towards individual countries/regions/situations and set the limits for the EU's and its Members States' action. The External Action Council (EAC) would be in charge of their implementation.

K. *Union's competence to conclude international agreements*

- The Treaty should indicate the EU's competence to conclude agreements covering issues falling under its internal competences. The voting procedure within the Council should be the same as applied for corresponding internal issues (normally QMV).

L. *Enhancing coherence and efficiency between institutions and actors*

- The coherence between actors of the external action could be enhanced by creating of a new office of a “European External Representative” (EER) that would merge the current functions of the High Representative (HR) and RELEX Commissioner. The EER⁶ would be appointed by the Heads of State or Government with approval of the Commission President and endorsement by the Parliament, for the CFSP issues would be accountable to the Council

⁶ The role and delimitation of competences of the EER would be interconnected with the possible creation of the post of a permanent President of the EU.

where he/she would be granted the right of initiative (not exclusive) but not the right to vote. Simultaneously, he/she would be a full member of the Commission, preferably its Vice-President with full right to put forward proposals and participate in decision-making currently falling under Community competence. Finally, he/she would replace the current role of Troika in the external representation.

F. Enhancing coherence and efficiency in external action within each institution

- The External Action Council (EAC), formally distinct from the General Affairs Council (GAC) should be established in order to enhance the efficiency in external action.
- All external issues within the Commission competence should be co-ordinated, most preferably by its Vice-president.

G. Enhancing coherence and efficiency at the level of services

- There should be established one joint service (European External Action Service), composed of DG RELEX officials, Council Secretariat officials and staff seconded from national diplomatic services, working under authority of the HR/EER.
- An EU diplomatic academy and EU diplomatic service should be established and the current Commission delegations should be gradually transformed into the EU delegations/embassies.

H. Instruments and decision-making

- The EER and the Commission should have the possibility to put forward “joint initiatives”.
- The QMV should be – under existing provisions – used to the maximum extent as well as provisions allowing for some forms of flexibility such as constructive abstention.
- The European Council should have the possibility to extend the use of QMV in the field of CFSP by unanimous agreement.

CH. Development Co-operation Policy

- The administrative and legal instruments for managing EC/EU development programmes should be simplified.
- The European Development Fund (EDF) could possibly be integrated into the overall EU budget.

I. Role of the European Parliament

- The HR/EER should be involved in informing the EP of development and options of CFSP.

J. Financing CFSP

- The HR/EER should be granted a degree of autonomy in financing activities that are necessary to the carrying of his/her mandate.
- Procedures allowing prompt disbursement and action in real time should be introduced.

M. International Agreements

- The new Treaty should include one single set of provisions on the negotiations and conclusion of international agreements. The Council would decide the

actor to negotiate on behalf of the Union (HR/EER, or the Commission or jointly).

N. *External Representation*

- The Union should seek for a formal status of some relevant international organisations, without prejudice to the status of MS
- The Member States should enhance the co-ordination of their positions in the international organisations in order to strengthen the EU stance.
- When there is an agreed position of the Union, a single spokesperson – preferably HR/EER - should speak for the Union in the international fora.

5. Proposal and Justification of the Czech Positions

A. *Framework for the position of the Czech Republic*

- Despite the current position as a candidate country, the Czech Republic should try to contribute actively to the debate about the future of European Union. It has to formulate and defend the Czech views with respect to the future membership in the Union with full rights and obligations.
- As a smaller state within the enlarged Union, the Czech Republic should closely co-operate with states of similar interests arising from geographical closeness (Visegrad) or conformity of foreign policy priorities (e.g. Benelux). The further extension of community aspects of the integration into areas currently falling under the competence of Union's Member States would the best preserve the interests its smaller members and guarantee their equal status.
- The Czech Republic does not seem to have identified any specific foreign policy area within the Union to focus on. Therefore, its aims (in the limits of external action) should be mostly inward-directed – e.g. supporting other member states, mediating in case of diversity of MS' position. Nevertheless, despite the above mentioned limitations, the Czech Republic should be able to participate actively in framing the EU position.
- The options of CFSP has to be realistically examined since the possibility of institutional co-operation rapprochement seems improbable. The Member States will continue to maintain their rights to formulate their foreign policy. Therefore, the political co-operation towards third countries will continuously depend on political will among their representatives. It is very unlikely that the Czech Republic should experience difficulties when following the main directions set out by the EU policy. However, CFSP proposals need to be considered both from the perspective of a) feasibility (probability that all MS express the will to support and accomplish the pre-set goals) and b) ability to fulfil the obligations of the commitment.

B. *Recommendations*

- There is a dual substance of the Union's external action – the external economic relations falling under Commission's responsibility and decision-making falling and on the other hand the external political relations falling under the authority of the Council (representing will of the Member States) where the decisions are taken by unanimity (the foreign policy issues are traditionally closely linked to national

sovereignty and thus must be handled in the most sensitive way). Bearing this in mind, it is necessary to maintain diverse procedures for various issues in the external action. However, in order to enhance the Union's role on the international stage and strengthen the Union's capacity to react adequately on the challenges of the changing world, the Union must improve its coherence and maximise its effectiveness:

- **Competences:** Should the European Union fulfil its ambition of becoming a global player on the international scene, it must be perceived from outside as a single entity, albeit internally considerably heterogeneous. Therefore, the Union should have a single legal personality.
- **Coherence and efficiency of action:** The EU should maximise the use of the whole range of instruments for external action – economical (programmes for technical and economic co-operation with third countries, funds for humanitarian assistance and development programmes) and political (arrangements for joint diplomatic action, actions by the Presidency, disposition to conclude different types of bilateral and multilateral agreements, evolving crisis management capacity). Their mutually reinforcing character would increase the credibility of the Union as the political will would be underpinned by practical feasibility of launching an effective action. Furthermore, the large scale of options for response and possibility of combination of various tools would enable the Union to flexible response and would make possible further adjustments reacting on the evolving situation.
- **Structures within and between institutions:** In order to fulfil both prerequisites of the external action – maintaining the different procedures for different issues but at the same time enhancing the efficiency of the Union's external action, it would be advisable to set up a new “double-hatted” institution, exercising offices of both – the HR and RELEX Commissioner. Such an office (can be titled as the “European External Representative (EER) or otherwise) would roof and co-ordinate all forms of Union's external action. From the point of view of the current HR, the EER would – for the CFSP issues – receive mandate from the Council to which he/she would be accountable. Furthermore, taking into consideration that this idea is unlikely to be shared by some EU Member States, the bigger in particular, the EER should be the single spokesperson of the Union and would have the exclusive competence to represent the Union in bilateral as well as multilateral relations. He/she would be no longer holding the office of the Secretary-General of the Council. Finally, the EER should be granted the right of initiative in the Council (formal but not exclusive) but would not have the right to vote. Simultaneously, the EER would become a full member of the Commission⁷ where he/she would “play in accordance to the Community rules”, would have the right to put forward proposals to the College and participate in its decisions without restrictions and within the framework of its regular procedures. The unnecessary duplication of services should be avoided by establishing one joint

⁷ The position of EER in the Commission can be strengthened by appointing him/her the Vice-President. On the one hand it is very logical and reasonable to have a single person in the Commission with direct responsibility for all issues dealing with the external relations as its implications occur almost in all Community areas. On the other hand, such a provision could lead to decrease of collegiality in the Commission, especially between the EER on one and the rest of Commissioners on the other side. However, the need for coherency should prevail over the fears of eventual personal clashes.

service composed of DG RELEX officials, Council Secretariat officials and seconded staff from the national diplomatic services. The placement of such a joint service should be subject to further considerations examining the implications of making it a part of the Commission service or functioning separately. The appointment of EER, ensuring his/her political legitimacy would be the competence of the European Council (in composition of Heads of State and Government), would have to be approved by the Commission President and endorsed by the European Parliament.

- **Instruments and decision-making:** The unanimity required for CFSP issues restricts considerably the EU capacity to react effectively and “in real time” on changes in the international scene. Moreover, in the enlarged Union, the chance of reaching a compromise satisfying all Members States would be further diminished. On the other hand, it is well in accordance with sovereignty of each Member State to keep the sensitive issues of foreign policy solely under its competence. It is unrealistic – for the time being – to assume that some states (particularly the bigger ones with global interests) would be in favour of extending the QMV to CFSP area, this being a prerequisite for Union to gain more respect internationally (the support for this idea logically comes from the smaller EU members and candidates whose foreign policy options are rather limited and “Europe-centred”). However, there exist ways of how to reduce the negative effects of unanimity decision-making. Firstly, the Members States should consider more use of constructive abstention, a sort of compromise enabling adoption of decisions while recognising the will of one or more Member States not to subscribe to it. Secondly, the Member States wishing to co-operate more closely in the field of foreign policy should have the possibility to do so (and due to the future extend of Union, some forms of regional co-operation and groupings of Member States with same interests are likely to evolve). However, such a co-operation should be open to all other Member States and should complement the overall aims and objectives of Union’s external action rather than to function outside that framework. Lastly, the European Council should have the right to decide by unanimity about introducing the QMV into the area of CFSP.
- **Financing the CFSP:** There should be a sum of financial resources (allocated preferably from the Community budget) enabling the EER to react promptly on evolving international crises, especially by financing urgent preparatory steps to civilian crisis management operations.
- **International Agreements:** The negotiation and conclusion of international agreements should be ensured by a single provision within the Council and requiring assent of the European Parliament. In case of “cross-pillar mixity”, the Council would indicate the institution to act on behalf of the Union – the EER and/or/together with the Commission and/or under supervision of a committee.

6. Conclusion

The Convention’s debate about the future shape of Union’s external action has identified requirements to be met in order to approach the ambition of becoming a credible international player. It has become clear that due to the complexity of the whole issue, it will be very difficult to increase the coherence of action while maintaining the necessary

distinction in procedures and decision-making. There exists an obvious mismatch between what is necessary to be done from the point of the Union and how the individual Member States are willing and able to comply with the common European interest while following their national foreign-policies directions. In other words, it is likely that the progress of the Union in the field of foreign policy and especially its practical implications will be slower than it would be desirable. Although Europe has already drafted its foreign policy objectives and has agreed on the major objectives and even means of achieving them, the problem of lack of a “tissue” that would make it work effectively has not been yet removed.

It is beyond any doubts that the European integration would have not reached its current stage without people whose visions had exceeded the realities of their times. Nevertheless, as long as the Member States insist on keeping their final say in the political aspects of Union’s external relations bearing in mind their sensitivity and need to cope with them cautiously and with a substantial degree of pragmatism, the European Union will not be able to fulfil the ambition of “speaking with one voice” on the international stage.